

SUPREME JUDICIAL COURT

Boston, Massachusetts 02108

NOTICE OF APPROVAL

Notice is hereby given that the Supreme Judicial Court has approved and promulgated rules as further indicated below.

MARGARET H. MARSHALL
Chief Justice

1. Commission Submitting Rules for Approval:

Commission on Judicial Conduct

2. Date Rules Submitted for Approval:

January 18, 2007

3. Date Approved and Promulgated by the Supreme Judicial Court:

May 8, 2007

4. Rules or Rules, or Amendments Thereto, Approved and Promulgated:

Rule of the Commission on Judicial Conduct - 1.F (new); 1.G-

N (renumbered); 6.V (new); 7.B(5) (new); and 13 (new).

Effective date - July 1, 2007

(The original of this notice is to be filed in the office of the Clerk of the Supreme Judicial Court for the Commonwealth, and a copy to be sent by the Clerk to the court which requested approval of the rules.)

May 4, 2007

The Honorable John M. Greaney
Justice of the Supreme Judicial Court
John Adams Courthouse, Suite 2500
One Pemberton Square
Boston, MA 02108-1750

Re: OE-0117

Dear Justice Greaney:

Pursuant to the Order of the Court dated August 9, 2006 in the above-numbered matter, the Commission on Judicial Conduct respectfully submits the enclosed amendments to the Rules of the Commission. We understand that the effective date will be July 1, 2007.

Thank you.

Respectfully yours,

Robert J. Guttentag
Chairman

Enclosure

Rule 1. DEFINITIONS

Rule 1.F. "Conditions on the Judge's Conduct," for purposes of G.L. c.211C, section 8(1) c), shall include but not be limited to:

- (1) education;
- (2) training;
- (3) mentoring;
- (4) foreclosing eligibility for recall;
- (5) an agreed-upon press release to be issued, with no other public comment on the matter by either party;
- (6) requiring that a decision in a court case be issued by a certain date;
- (7) periodic status reports;
- (8) meeting with Commission members and/or staff;
- (9) writing an apology to a person or to the public;
- (10) requiring the judge to caution the judge's family members regarding misuse of their relationship to the judge;
- (11) agreeing never to mediate, hear or rule on any matters involving the attorneys who investigated and prosecuted the matter, or their firms;
- (12) insuring that official audio equipment is recording at all times during court proceedings;
- (13) holding conferences on the record;
- (14) otherwise requiring a judge to comply with the law, the Code of Judicial Conduct and other rules, regulations, orders and procedures.
- (15) If the Commission finds that a condition not specified herein would be appropriate, the Commission may file under seal a request with the Supreme Judicial Court to rule within fourteen days as to whether that condition is permissible in this category, without disclosing the identity of the judge.
 - (a) If the Court does not rule within fourteen days, the Commission may assume that the condition is permissible in this category.

[The current Rule 1.F. becomes 1.G., the current Rule 1.G. becomes 1.H., and so forth, through the current 1.M. becoming 1.N.]

Rule 6. COMMISSION PROCEEDINGS: INITIAL STAGES; GENERAL PROVISIONS

...

Rule 6.V. Enforcement of an agreement for Informal Adjustment shall be by the Commission, or, upon application by the Commission to the Supreme Judicial Court, by the Court.

Rule 7. SUFFICIENT CAUSE FOR FORMAL CHARGES

...

Rule 7.B. At this meeting the Commission shall vote to dispose of the case in one of the following ways:

...

- (5) If it finds that there has been conduct that is or might be cause for discipline and for which direct submission to the Supreme Judicial Court is appropriate, it may, with the agreement of the judge, make a direct submission in accordance with Rule 13.

Rule 13. DIRECT SUBMISSION TO THE SUPREME JUDICIAL COURT

At any stage of a proceeding the Commission may, with the agreement of the judge, elect one of the following methods for direct submission to the Supreme Judicial Court.

A. Final Submission Upon Agreed Facts.

(1) The Commission and the judge will prepare and sign an Agreement for Final Submission to the Supreme Judicial Court Upon Agreed Facts. The Agreement will contain:

- (a) A waiver by the judge of the right to a formal hearing.
- (b) A stipulation by the judge to facts sufficient, in the judgment of the Commission, to establish judicial misconduct.
- (c) A statement of the section(s) of the Code of Judicial Conduct which the Commission alleges, and the judge agrees, the judge has violated.
- (d) Statements by the Commission and by the judge of their joint or disparate recommendations for discipline by the Supreme Judicial Court.
- (e) Agreement by the Commission and the judge that the Supreme Judicial Court may accept or reject the recommendations of the Commission or the judge or may impose whatever discipline it deems appropriate.
- (f) Acknowledgment by the Commission and the judge that the decision of the Supreme Judicial Court will constitute the final disposition of the case.
- (g) A waiver by the judge of any confidentiality rights that would preclude submission of the matter to, or disclosure of the matter by, the Supreme Judicial Court, including the items to be submitted as specified herein, and the Supreme Judicial Court's disposition of the case.

(2) The Commission will submit to the Supreme Judicial Court under seal:

- (a) The Agreement for Final Submission Upon Agreed Facts.
- (b) A copy of the complaint, statement of allegations and formal charges, if any, and all responses.
- (c) Any other information agreed to by the parties.

(3) The Supreme Judicial Court may accept or reject the recommendation of either the Commission or the judge or may impose whatever discipline it deems appropriate.

B. Conditional Submission Upon Acknowledged Evidence

(1) The Commission and the judge will prepare and sign an Agreement for Conditional Submission to the Supreme Judicial Court Upon Acknowledged Evidence. The Agreement will contain:

- (a) A waiver by the judge of the right to a formal hearing.
- (b) A Statement of Evidence which in the Commission's view provides a basis for a finding of misconduct. The Statement of Evidence will identify the section(s) of the Code of Judicial Conduct which the Commission alleges the judge to have violated.

(c) An acknowledgment by the judge that the evidence set forth in the Statement of Evidence, if presented to and accepted by a Hearing Officer at a formal hearing as clear and convincing, would support a finding of such misconduct.

(d) A recommendation to the Supreme Judicial Court, agreed to by both the Commission and the judge, regarding appropriate discipline.

(e) Agreement by the Commission and the judge that (i) if the Supreme Judicial Court accepts their agreed recommendation for discipline, the decision of the Supreme Judicial Court will constitute the final disposition of the case; and (ii) if the Supreme Judicial Court does not accept their agreed recommendation, the Commission will proceed to consider and dispose of the complaint in accordance with these Rules, which disposition may include issuance of formal charges.

(f) A waiver by the judge of any confidentiality rights that would preclude submission of the matter to the Supreme Judicial Court, including the items to be submitted as specified herein.

(g) Agreement by the Commission and the judge that the submission will be made on condition that it be impounded by the Supreme Judicial Court.

(2) The Commission will submit to the Supreme Judicial Court:

(a) The Agreement for Conditional Submission Upon Acknowledged Evidence.

(b) A copy of the complaint, statement of allegations and formal charges, if any, and all responses.

(c) Any other information agreed to by the parties.

(3) The Supreme Judicial Court may accept or reject the recommended discipline agreed to by the Commission and the judge but may not at this stage impose other discipline.

C. The Supreme Judicial Court may request additional information from the parties or schedule oral argument before acting on a final or conditional submission.

D. If the Commission and the judge fail to agree upon an Agreement for Final or Conditional Submission to the Supreme Judicial Court under either 13.A. or 13.B. above, the Commission will proceed to consider and dispose of the complaint in accordance with these Rules, which disposition may include issuance of formal charges.